

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JUDITH FONSECA  
Plaintiff

v.

MAXI DRUG, INC., d/b/a  
BROOKS PHARMACY,  
Defendants

FILED  
CLERKS OFFICE

CIVIL ACTION NO.: 04-11870-~~WEB~~

2005 MAR 10 11 26  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
AMENDED COMPLAINT and  
DEMAND FOR TRIAL BY JURY

JLA

JURISDICTION

The plaintiff in this action is a resident of the Commonwealth of Massachusetts, while the defendants are foreign corporations. Jurisdiction is, therefore, based upon the diversity of citizenship between the plaintiff and the defendants under 28 U.S.C. 1332.

COUNT I

AS AGAINST MAXI DRUG, INC., d/b/a BROOKS PHARMACY IN WARRANTY

1. The Plaintiff, JUDITH FONSECA, is a resident of Fall River, Bristol County, and Commonwealth of Massachusetts.

2. The Defendant, Maxi Drug, Inc., d/b/a BROOKS PHARMACY, is a foreign corporation organized under the laws of the state of Delaware with a principal place of business at 50 Service Avenue, Warwick, Rhode Island and with a registered agent in Massachusetts namely National Corporate Research, LTD, located at 18 Tremont Street, Suite 148, Boston, Massachusetts.

3. The defendant was, on August 27, 2001 and all dates relevant hereto, engaged in the ownership, operation and control of a pharmacy at 933 Pleasant Street, Fall River, Bristol County, Massachusetts, where it offered for sale prescription drugs for human consumption.

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4. On or about August 27, 2001 while the plaintiff was a patron at defendant's pharmacy, she caused a drug prescription to be filled out at said pharmacy.

5. The plaintiff ingested the drugs purchased from the defendant relying upon the defendant's express and implied warranties that the drugs she was ingesting were the drugs prescribed by her physician but, in fact, the drugs given to her by the defendant pharmacy and ingested by her according to the instructions printed by the defendant on the prescription bottle were not the drugs prescribed by her physician.

6. Upon the plaintiff's ingestion of the drugs given to her by the pharmacy, and as a direct and proximate result of the defendant's breach of said warranties, the plaintiff became violently ill, was caused to expend money for medical care and attention, was caused to require emergency room admission, was caused to be incapacitated from earning her livelihood, was caused lasting and permanent injuries, was caused loss of enjoyment of life, and was caused great mental anguish and was caused to be otherwise greatly damaged.

WHEREFORE, the plaintiff demands judgment against the defendant, Maxi Drug, Inc., d/b/a BROOKS PHARMACY, in an amount to be determined by the Court plus interest and costs of this

**COUNT II**  
**AS AGAINST MAXI DRUG, INC., d/b/a BROOKS PHARMACY, IN NEGLIGENCE**

1. The Plaintiff, JUDITH FONSECA, is a resident of Fall River, Bristol County, and Commonwealth of Massachusetts.

2. The Defendant, MAXI DRUG, INC., d/b/a BROOKS PHARMACY, is a foreign corporation organized under the laws of the state of Delaware with a principal place of business at 50 Service Avenue, Warwick, Rhode Island and with a registered agent in Massachusetts named National Corporate Research, LTD, located at 18 Tremont Street, Suite 148, Boston, Massachusetts.

3. The defendant was on August 27, 2001 and all dates relevant hereto was engaged in the ownership, operation and control of a pharmacy at 933 Pleasant Street, Fall River, Bristol County, Massachusetts, where it offered for sale prescription drugs for human consumption.

4. On or about August 27, 2001 while the plaintiff was a patron at defendant's pharmacy, she caused a drug prescription to be filled out at said pharmacy.

5. The defendant owed a duty to the plaintiff to exercise reasonable care in filling the plaintiff's prescription, in insuring that the medication provided to the plaintiff by the defendant was the same medication prescribed by her physician, in providing the plaintiff with the same instructions for ingesting the medication as those prescribed by her physician and, furthermore, the defendant owed a general duty to the plaintiff to exercise reasonable care under the circumstances so as to adequately and reasonably protect the plaintiff from foreseeable harm.

6. The plaintiff ingested the drugs purchased from the defendant relying upon the defendant's duty to exercise reasonable care in filling the prescription as the plaintiff's physician wrote it and in taking reasonable measures to ensure that the drugs she was ingesting were the drugs prescribed by her physician but, in fact, the drugs given to her by the defendant pharmacy and ingested by her in accordance with the instructions printed by the defendant on the prescription bottle were not the drugs prescribed by her physician.

7. Upon the plaintiff's ingestion of the drugs given to her by the pharmacy, and as a direct and proximate result of the defendant's breach of said warranties, the plaintiff became violently ill, was caused to expend money for medical care and attention, was caused to require emergency room admission, was caused to be incapacitated from earning her livelihood, was caused lasting and permanent injuries, was caused loss of enjoyment of life, and was caused great mental anguish and was caused to be otherwise greatly damaged.

8. The defendant breached its duty to exercise reasonable care in filling the plaintiff's prescription by negligently giving the wrong medication to the plaintiff and said

negligence of the defendant was the direct and proximate cause of all the plaintiff's damages hereinabove and herein below mentioned.

9. As a direct and proximate result of the negligence of the defendant, and as a direct and proximate result of ingesting said drugs, the plaintiff became violently ill, was caused to expend money for medical care and attention, was caused to require emergency room admission, was caused to be incapacitated from earning her livelihood, was caused lasting and permanent injuries, was caused loss of enjoyment of life, was caused great pain and anguish, and was caused to be otherwise greatly damaged.

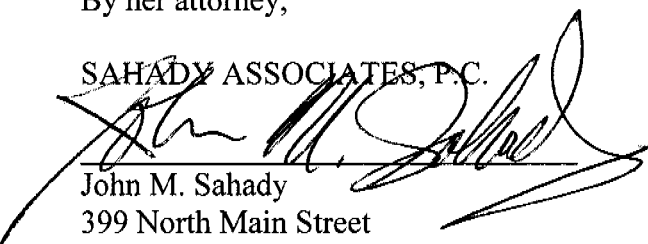
WHEREFORE, the plaintiff demands judgment against the defendant, MAXI DRUG, INC., d/b/a BROOKS PHARMACY, in an amount to be determined by the Court plus interest and costs of this action.

**PLAINTIFF DEMANDS TRIAL BY JURY**

Respectfully submitted,

By her attorney,

SAHADY ASSOCIATES, P.C.



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Dated: February 23, 2005